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Nominal Defendant Eco Science Solutions,
Inc.*

16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 HANS MENOS, derivatively on behalf of
19 ECO SCIENCE SOLUTIONS, INC.,

20 Plaintiff,

21 v.

22 JEFFERY L. TAYLOR, DON L.
23 TAYLOR, L. JOHN LEWIS, S.
24 RANDALL OVESON, and GANNON
25 GIGUIERE,

Defendants,

and
ECO SCIENCE SOLUTIONS, INC.,
Nominal Defendant.

Case No. 3:17-CV-00662-LRH-CB

**PROPOSED CONFIDENTIALITY
ORDER**

26 The parties, through their respective counsel, stipulate to the entry of a protective order to
27 govern the dissemination of documents, materials, and other information, including the substance
28

1 and content thereof, designated by any party as confidential and produced by any party in support
2 of motions, in response to written discovery, or during any formal or informal discovery in this
3 litigation subject to the terms as set forth below.

4 **WHEREAS**, the parties to the Proceeding, through their respective counsel, have agreed
5 that a protective order preserving the confidentiality of certain documents and information should
6 be entered by the Court.

7 **THEREFORE, IT IS ORDERED** as follows:

8 **I. Definitions**

9 1. **Confidential Information.** “Confidential Information” is defined herein as any
10 information that constitutes, reflects, discloses, or contains: (1) a “trade secret or other confidential
11 research, development, or commercial information” that is suitable for protection under Federal
12 Rule of Civil Procedure 26(c)(1)(G); and (2) information that may be protected from disclosure
13 under a party’s constitutional right of privacy or whose dissemination would have the tendency to
14 embarrass or otherwise prejudice the party it concerns.
15

16 2. **Trade Secret.** A party, in designating information “Confidential” because it
17 contains a “Trade Secret,” shall designate only information that meets the definition of trade secret
18 contained in 18 U.S.C. § 1839:
19

20 the term “trade secret” means all forms and types of financial,
21 business, scientific, technical, economic, or engineering
22 information, including patterns, plans, compilations, program
23 devices, formulas, designs, prototypes, methods, techniques,
24 processes, procedures, programs, or codes, whether tangible or
intangible, and whether or how stored, compiled, or memorialized
physically, electronically, graphically, photographically, or in
writing if –

25 (A) the owner thereof has taken reasonable
26 measures to keep such information secret; and

27 (B) the information derives independent
28 economic value, actual or potential, from not being

generally known to, and not being readily ascertainable through proper means by, the public.

3. **The Proceeding.** The “Proceeding” means *Menos v. Taylor, et al*, Case No. 3:17-CV-00662-LRH-CB, pending in the United States District Court District of Nevada.

II. Information Within the Scope of the Protective Order

4. This Protective Order shall govern all hard copy and electronic materials, the information contained therein, and all other information produced or disclosed during the Proceeding, including all copies, excerpts, summaries, or compilations thereof, whether revealed in a document, deposition, other testimony, discovery response, or otherwise, by any party to the Proceeding or its representatives (the “Supplying Party”) to any other party or parties to the Proceeding or their representatives (the “Receiving Party”), whether provided voluntarily, pursuant to formal discovery procedures, or otherwise. The Parties agree that confidentiality of materials at trial will be determined by the Court after a separate briefing and/or argument process.

Notwithstanding the foregoing, this Protective Order does not address or alter whether or not Defendants may argue that non-confidential documents should still be entitled to protection under the work-product doctrine and/or the attorney-client communication privilege.

III. Designating Information As “Confidential” Pursuant to This Protective Order

5. **Documents.** Any Supplying Party producing documents that contain information that meets the definition of Confidential Information as provided in Paragraphs 1 and 2 herein, may designate the contents of the documents as “Confidential” prior to or at the time of production by placing the following designation on the documents: “CONFIDENTIAL – Subject to Protective Order.” Where a document consists of more than one page, each page of the document shall be designated as such. Any document or information for which it is impracticable or impossible to affix such a legend may be designated by written notice to that effect with a reasonable description of the material in question including a Bates number, where applicable.

1 6. If a Supplying Party makes documents or information available for inspection,
2 rather than delivering copies to another party, no “Confidential” designation is required in advance
3 of the initial inspection. For the purposes of initial inspection only, the documents shall be
4 considered “CONFIDENTIAL.” Upon production of the inspected documents, the Supplying
5 Party shall designate which of the produced or copied documents and materials are or contain
6 Confidential Information pursuant to Paragraph 5 of this Order.

7
8 7. **Written Discovery.** If responses to written discovery contain Confidential
9 Information as defined in Paragraph 1 and 2 of this Protective Order, the Responding Party may
10 designate the responsive documents and information, as set forth in Paragraph 5, with specific
11 indication of the page and line references of the material that is “Confidential” under the terms of
12 this Protective Order.

13 8. **Depositions.** The parties may designate as Confidential any deposition transcript,
14 or portions thereof, in the Proceeding that meets the definition of Confidential Information
15 provided in Paragraphs 1 and 2 of this Protective Order. Counsel for the designating party shall
16 advise the court reporter and the parties on the record during the deposition or by letter no later
17 than thirty (30) calendar days after the court reporter provides the parties with the final deposition
18 transcript. If any portion or all of a deposition transcript is designated as Confidential Information,
19 the court reporter shall label the cover page of the original and one copy of the transcript to state
20 that Confidential Information is contained therein, and shall label as “Confidential” each page of
21 the transcript and/or exhibits to the deposition transcript that constitute “Confidential
22 Information.” Confidential designations of transcripts or portions thereof, apply to audio, video,
23 or other recordings of the testimony. The court reporter shall clearly mark any transcript or portion
24 thereof prior to the expiration of the 30-day period as “DO NOT DISCLOSE – SUBJECT TO
25 FURTHER CONFIDENTIALITY REVIEW.” Deposition transcripts or portions thereof will be
26 treated as Confidential Information until expiration of the 30-day period. If any party does not
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1 designate the transcript as “Confidential” either at the time of the deposition or within the 30-day
 2 period defined above, no portion of the entire transcript will be deemed “Confidential” and the
 3 “DO NOT DISCLOSE- SUBJECT TO FURTHER CONFIDENTIALITY REVIEW” legend shall
 4 be removed. The 30-day period may not be extended without mutual agreement of the parties.

5 **9. Confidential Information Produced by Third Parties.** A party in the Proceeding
 6 may designate as Confidential any document, information, or testimony produced or supplied by
 7 any person or entity not a party to the Proceeding, that constitutes or meets the definition of
 8 Confidential Information as defined in Paragraphs 1 and 2 of this Protective Order. The party
 9 claiming confidentiality shall designate the information as such within thirty (30) days of its receipt
 10 of such information. Any party receiving information from a third party shall treat such
 11 information as Confidential Information during this thirty (30) day period while all parties have
 12 an opportunity to review the information and to determine whether it should be designated as
 13 confidential. Any party designating third party information as Confidential Information shall have
 14 the same rights, duties, and obligations, as a Supplying Party under this Protective Order.
 15

16 **10. Publicly Available Information.** The confidentiality restrictions and
 17 confidentiality obligations set forth herein shall not apply to information that is at the time of
 18 production or disclosure, or subsequently becomes, through no wrongful act on the part of the
 19 Receiving Party, generally available to the public through publication or otherwise. This includes
 20 information published during public hearings and trials, if the Supplying Party does not move to
 21 seal or appeal any order denying such motion to seal within the time permitted under the applicable
 22 rules. Notwithstanding the foregoing, this Protective Order does not address or alter whether or
 23 not Defendants may argue that non-confidential documents should still be entitled to protection
 24 under the work-product doctrine and/or the attorney-client communication privilege.
 25

26
 27 **IV. Limitations on Use of Confidential Information**
 28

1 11. All Confidential Information shall be used for the purpose of the Proceeding only,
2 and except as permitted by this Order, the parties and their respective attorneys, as well as experts
3 or consultants or those who the parties agree may have access to Confidential Information as in
4 Paragraph 13, shall not give, show, or otherwise divulge or disclose the Confidential Information,
5 or any copies, prints, or summaries thereof to any person or entity.

6 12. Confidential Information pursuant to this Protective Order shall be treated by the
7 parties, their counsel, and any other signatory to this Protective Order as being confidential and
8 private. Any copy of Confidential Information shall have the same status as the original. The
9 disclosure and use of Confidential Information shall be confined to the permissible disclosures and
10 uses set forth in this Protective Order, and no one shall disclose or use Confidential Information in
11 a manner inconsistent with the terms and the intent of this Protective Order.

12 13. Confidential Information may be disclosed or made available without written
13 consent from the Supplying Party *only* to the following persons and shall be used solely for the
14 litigation of the Proceeding and may not be disclosed to anyone not authorized under this
15 paragraph:
16

17 a. Parties, their representatives, and regular employees who are actively
18 engaged in, or actively overseeing, the Proceeding;
19

20 b. Counsel of record, their associated attorneys, and support staff,
21 including paralegal and secretarial personnel, who are working on the Proceeding;
22

23 c. Experts and consultants (including their employees/contractors) who
24 are consulted or retained by a party to assist in the litigation of the Proceeding;

25 d. Witnesses or prospective witnesses in the Proceeding;

26 e. Court reporters, videographers, and other persons involved in
27 recording deposition testimony in the Proceeding;
28

1 f. The Court and its personnel, including any mediators and/or special
2 masters appointed by the Court, or if an appeal, the court with appellate jurisdiction;

3 g. Jurors in the Proceeding;

4 h. Any person or entity whom counsel for all parties agree in writing
5 should have access to such materials and who agrees to be bound by the terms of
6 this Order; and

7 i. The author or recipient of the document(s) or the original source of
8 information.
9

10 14. Prior to the disclosure of any Confidential Information to any person identified in
11 Paragraph 13 above (except as to Paragraphs 13(b), 13(e), 13(f), 13(g), and 13(i)), the disclosing
12 party will provide each potential recipient of Confidential Information with a copy of this
13 Protective Order, which said recipient shall read. Upon reading this Protective Order, such person
14 shall sign a copy of the Agreement to Maintain Confidentiality (“Confidentiality Agreement”),
15 attached to this Order as **Exhibit A**, acknowledging that he or she has read this Protective Order
16 and shall abide by its terms. These Confidentiality Agreements are strictly confidential and shall
17 be maintained by counsel for each party and only with good cause shown and separate court order
18 will the Confidentiality Agreements be disclosed to the opposing side. Persons who come into
19 contact with Confidential Information for clerical or administrative purposes, and who do not
20 retain copies or extracts thereof, are not required to execute Confidentiality Agreements but must
21 comply with the terms of this Protective Order.
22

23 15. Any witness deposed in this Proceeding shall be provided prior to or at the outset
24 of his or her deposition with a copy of this Protective Order and such person shall either (i) execute
25 the Confidentiality Agreement or (ii) on the record at the deposition, shall agree to be bound by
26 the terms of this Protective Order by virtue of an Order of the Court.
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1 16. All persons receiving or given access to Confidential Information in accordance
2 with the terms of this Order consent to the continuing jurisdiction of this Court for the purposes of
3 enforcing this Order and remedying any violations thereof.

4 17. Confidential Information shall not be placed or deposited in any sort of data bank
5 that is made available for indiscriminate or general circulation to lawyers, litigants, consultants,
6 expert witnesses or any other persons not working on the Proceeding and not signatories to this
7 Protective Order. This paragraph and the other provisions of this Order shall not apply to materials
8 which, if challenged by any party, the Court rules are not entitled to protection. This paragraph
9 does not limit or restrict in any way the manner in which a party may store and make Confidential
10 Information available to the attorneys, support staff, experts, and any other persons or entities
11 working on the Proceeding, provided the general terms of this Order are followed.
12

13 18. The parties and their counsel as well as their experts shall also not sell, offer,
14 advertise, publicize nor provide under any condition any Confidential Information produced by
15 any other party to any competitor of any defendant or to any employee or any competitor
16 (irrespective of whether they are retained as an expert by a party in the Proceeding).
17

18 19. In the event that either of the parties is served by a non-party with a subpoena for
19 Confidential Information that was originally provided and claimed as Confidential by another
20 party, the Receiving Party will give notice to the Supplying Party, where reasonably possible, no
21 less than ten (10) business days prior to disclosure by providing a copy of the subpoena, to allow
22 a reasonable opportunity for the Supplying Party to object to such production before any
23 production takes place.
24

25 20. If a Receiving Party learns of any unauthorized disclosure of Confidential
26 Information, it shall take reasonable efforts to immediately: (a) inform the Supplying Party in
27 writing of such disclosure, including to whom the material was disclosed; (b) make a reasonable
28 effort to retrieve all copies of the Confidential Information only to the extent the Receiving Party

1 has control over the unauthorized disclosed documents; (c) and to the extent the Receiving party
2 has control over the person or persons to whom unauthorized disclosures were made, inform the
3 persons of the terms of this Protective Order.

4 **V. Filing Under Seal**

5 21. **Where a Party Files Documents and Contends the Documents Should be Kept**
6 **Sealed.** Where a party intends to file documents that contain Confidential Information with the
7 Court, said party will file documents under seal using the Court's electronic filing procedures, in
8 accordance with Local Rule IA 10-5. The party will file a motion for an order sealing the
9 documents consistent with Local Rule IA 10-5(a) and comply with the provisions of FRCP 5.2
10 and LR IC 6-1 of the local rules. A copy of the motion must be served on all parties that have
11 appeared in the case.
12

13 22. **Non-dispositive Motions.** The parties recognize that the Ninth Circuit has held
14 that there is a presumption of public access to judicial files and records, and the party seeking to
15 maintain the confidentiality of documents attached to non-dispositive motions must show that
16 good cause exists to overcome the presumption of public access. Motions to file documents under
17 seal will be accompanied by a declaration establishing sufficient justification for sealing each
18 document at issue.
19

20 23. **Dispositive Motions.** The parties recognize that the Ninth Circuit has held that
21 there is a presumption of public access to judicial files and records, and the party seeking to
22 maintain the confidentiality of documents attached to dispositive motions must show that
23 compelling reasons exist to overcome the presumption of public access. Motions to file documents
24 under seal will be accompanied by a declaration establishing sufficient justification for sealing
25 each document at issue.
26
27
28

Respectfully submitted,

Dated: January 16, 2020

THE ROSEN LAW FIRM, P.A.

By: /s/ Erica L. Stone

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*Counsel for Defendants Jeffery L. Taylor,
Don L. Taylor, L. John Lewis, S. Randall
Oveson, and Gannon Giguere, and for
Nominal Defendant Eco Science Solutions,
Inc.*

EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HANS MENOS, derivatively on behalf of
ECO SCIENCE SOLUTIONS, INC.,

Plaintiff,

v.

JEFFERY L. TAYLOR, DON L.
TAYLOR, L. JOHN LEWIS, S.
RANDALL OVESON, and GANNON
GIGUIERE,

Defendants,

and
ECO SCIENCE SOLUTIONS, INC.,
Nominal Defendant.

Case No. 3:17-CV-00662-LRH-CB

**AGREEMENT TO MAINTAIN
CONFIDENTIALITY**

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Confidentiality Order dated _____ in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the District of Nevada in matters relating to the Confidentiality Order and understands that the terms of the Confidentiality Order obligate him/her to use materials designated as Confidential Information in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information to any other person, firm or concern. The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

Name: _____
Job Title: _____
Employer: _____
Business Address: _____

Date: _____
Signature _____

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HANS MENOS, derivatively on behalf of
ECO SCIENCE SOLUTIONS, INC.,

Case No. 3:17-CV-00662-LRH-CB

Plaintiff,

v.

JEFFERY L. TAYLOR, DON L.
TAYLOR, L. JOHN LEWIS, S.
RANDALL OVESON, and GANNON
GIGUIERE,


Defendants,

and
ECO SCIENCE SOLUTIONS, INC.,
Nominal Defendant.

[PROPOSED] ORDER

AND NOW, on this 17th day of January, 2030, IT IS HEREBY

ORDERED that the meanings and provisions contained in the Proposed Confidentiality Order concerning the use and/or disclosure of Confidential Information shall control all documents produced pursuant to this Order and shall be effective as to all parties for the purposes of this proceeding.



United States Magistrate Judge

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on January 16, 2020, service of the foregoing ***Proposed Confidentiality Order*** was made through the Court's CM/ECF electronic filing system, upon all counsel of record.

/s/ Joel Max Eads

Joel M. Eads

Counsel for defendants and nominal defendant